

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA 08-743

ELIZABETH RODEN VINSON
APPELLANT

V.

DOLLAR GENERAL STORES
APPELLEE

Opinion Delivered February 11, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION,
[NO. F303102]

AFFIRMED

COURTNEY HUDSON HENRY, Judge

Appellant Elizabeth Roden Vinson appeals the decision of the Arkansas Workers' Compensation Commission (Commission) denying her request for additional medical services and ruling that they were not reasonably necessary pursuant to Arkansas Code Annotated section 11-9-508 (Supp. 2007). For reversal, she argues that the Commission's findings are not supported by substantial evidence. We affirm the Commission.

Vinson worked for appellee Dollar General Stores (Dollar General) as a store manager at the time of her injury on March 13, 2003. On her workers'-compensation claim form, Vinson indicated that she lifted a box of laundry soap, walked four or five steps to a dolly, put the box down, and felt a "popping sensation" in her lower back. After her injury, Vinson voluntarily transferred from store manager to assistant store manager to avoid lifting, but she continued working for Dollar General until November 2004 when she resigned. At that time, Vinson gained full-time employment at St. Edward's Mercy Medical Center.

Initially, Dr. Walter Kyle diagnosed Vinson's injury as a lumbar strain. However, multiple MRI studies, performed on March 19, 2003, September 5, 2003, and September 30, 2004, revealed the presence of a small focal left lateral recess disc protrusion at L4-5. In 2005, the Commission found Vinson's injury to be compensable as an L4-5 disc protrusion. Subsequently, Vinson continued to experience pain in her lower back.

On May 10, 2005, Vinson presented to Dr. Anthony Capocelli, a neurosurgeon, for an evaluation. Dr. Capocelli recommended a myelogram and discogram to determine whether surgical intervention was necessary. On May 31, 2005, Vinson consulted Dr. John Swicegood, an anesthesiologist, who thereafter treated Vinson by administering monthly steroid injections to alleviate pain in her lower back. On December 16, 2005, Dr. Swicegood recommended that Vinson undergo a targeted disc decompression, a \$4,800 procedure that would require six weeks off work, formal physical therapy, and one month of conditioning and strengthening.

Next, Vinson saw Dr. Michael Standefer, a neurosurgeon, to obtain a second opinion. Vinson reported that she continued to experience lower-back pain, pain radiating to her upper and lower extremities, numbness, and decreased sensation. On December 8, 2006, Dr. Standefer interpreted the prior MRI studies, which revealed "minuscule bulging" at L4-5. Dr. Standefer also reviewed Vinson's most recent MRI, conducted on October 19, 2006, and noted the absence of any focal protrusion involving the L4-5 disc, but he acknowledged that the MRI revealed a bulge at the L5-S1 disc. Dr. Standefer noted that other discs were unremarkable and that her gait was normal. He also noticed no obvious muscle spasms and no sensory impairment. He further documented that Vinson was obese and that she engaged

in no specific exercise program. He stated that “[i]t would appear at this juncture that her symptoms are most consistent with myofascial pain syndrome. . . [with] no evidence of any underlying neurosurgical problem.” He recommended an anti-inflammatory medication, an exercise program, and weight reduction. Dr. Standefer ordered an EMG-NCV, an electroneurological study, on Vinson’s leg.

On December 20, 2006, Dr. William Griggs of the Southwest Neurological Institute conducted electroneurological studies, which he interpreted as normal with no evidence of radiculopathy or myopathy involving Vinson’s lower extremities. One month later, Dr. Swicegood opined in a letter, dated January 19, 2007, that his recommended disc decompression should be performed only if a discogram warranted such treatment.

Vinson sought compensation for additional medical treatment by requesting pre-authorization for the treatment recommended by Dr. Swicegood, but Dollar General asserted that “any additional benefits” were not reasonably necessary. On January 30, 2007, the ALJ conducted a hearing, and by agreement of the parties, the issues to be litigated included Vinson’s entitlement to additional medical services as recommended by Dr. Swicegood, additional temporary partial disability, and attorney’s fees. At the hearing, Vinson, the sole witness, testified that she saw Dr. Swicegood once a month for steroid injections to alleviate pain in her back. She said that Dr. Swicegood recommended a percutaneous disc decompression, as well as a discogram, but she did not undergo either procedure because of

the cost. While Vinson thought her condition had worsened since the last hearing, she stated that she had not missed any work as a result of her lower back.

In an opinion entered April 27, 2007, the ALJ denied Vinson's request for a disc decompression and discogram, determining that those medical services were not reasonably necessary under section 11-9-508. The ALJ noted that Vinson underwent numerous physical examinations, x-rays, and MRI studies, which failed to demonstrate any objective indications of neurological abnormalities, muscle spasms, or compression of the spinal canal. The ALJ opined that Dr. Swicegood's diagnosis of the "existence of a continual discal disruption at L4-5 . . . [was] solely based upon the claimant's subjective complaints." Moreover, the ALJ stated that he afforded more weight to the opinion of Dr. Standefer because it was "more in accord with the results of the numerous examinations and extensive testing performed on the claimant." The ALJ also denied Vinson's requests for temporary partial disability benefits and attorney's fees.¹ On March 5, 2008, the Commission agreed with and adopted the ALJ's findings. From the Commission's order, Vinson brings her appeal.

For her sole point on appeal, Vinson argues that Dr. Swicegood's recommendation of additional medical treatment was reasonably necessary. Specifically, Vinson contends that substantial evidence showed that treatment of her continued pain warranted a discogram and a disc decompression.

Our workers'-compensation law provides that an employer shall provide the medical services that are reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a) (Supp. 2007). The employee has the burden of proving by

¹ Vinson does not appeal these determinations.

a preponderance of the evidence that medical treatment is reasonable and necessary. *Bohannon v. Walmart Stores, Inc.*, 102 Ark. App. 37, ___ S.W.3d ___ (2008). What constitutes reasonably necessary medical treatment is a question of fact to be determined by the Commission. *Id.*

We view the evidence in the light most favorable to the Commission's decision and affirm when that decision is supported by substantial evidence. *See Parson v. Arkansas Methodist Hosp.*, 103 Ark. App. 178, ___ S.W.3d ___ (2008). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *See Dorris v. Townsends of Ark., Inc.*, 93 Ark. App. 208, 218 S.W.3d 351 (2005). The issue is not whether the appellate court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, the appellate court must affirm the decision. *Id.* The substantial-evidence standard of review requires that we affirm if the Commission's decision displays a substantial basis for the grant of relief. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *White v. Georgia-Pacific Corp.*, 339 Ark. 474, 6 S.W.3d 98 (1999).

Further, we recognize that the Commission has the duty of weighing the medical evidence as it does any other evidence, and the Commission has the authority to accept or reject medical opinions. *Coleman v. Pro Transp., Inc.*, 97 Ark. App. 338, 249 S.W.3d 149 (2007). When the Commission weighs medical evidence and the evidence is conflicting, its resolution is a question of fact for the Commission. *Cedar Chem. Co. v. Knight*, 99 Ark. App.

162, 258 S.W.3d 394 (2007). The interpretation given to medical evidence by the Commission has the weight and force of a jury verdict, and this court is powerless to reverse the Commission's decision regarding which medical evidence it chooses to accept when that evidence is conflicting. *Hill v. Baptist Med. Ctr.*, 74 Ark. App. 250, 57 S.W.3d 735 (2001).

With this precedent in mind, we turn to the present case. Here, substantial evidence supports the Commission's findings that a discogram and disc decompression were not reasonably necessary medical treatment. The Commission weighed and credited the opinions of Dr. Standefer and Dr. Griggs over those of Dr. Swicegood and Dr. Capocelli. Further, the most recent MRI, conducted on October 19, 2006, no longer showed any discal defect at L4-5. Dr. Griggs corroborated this MRI finding by his electroneurological studies on Vinson's lower extremities, which he found to be normal. We further note that Vinson failed to offer any evidence that her disc bulge at L5-S1, which first appeared on her 2006 MRI, stemmed from her compensable injury on March 13, 2003. In fact, Vinson's three previous lumbar MRIs did not reveal a L5-S1 defect. Therefore, based upon the foregoing reasons, as well as our standard of review, we hold that substantial evidence supports the Commission's findings that the additional medical treatment recommended by Dr. Swicegood, including a discogram and disc decompression, was not reasonably necessary. Accordingly, we affirm the Commission's findings.

Affirmed.

GLADWIN and BAKER, JJ., agree.